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**SENATE BILL 5948**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senators Honeyford, Rasmussen, Deccio, Hewitt, Sheahan, Morton, Parlette, Swecker, Stevens and Hochstatter

Read first time 02/09/2001. Referred to Committee on Natural Resources, Parks & Shorelines.

1 AN ACT Relating to wildlife damage claims on rangeland suitable for  
2 grazing or browsing of domestic livestock; amending RCW 77.36.005,  
3 77.36.010, 77.36.030, 77.36.040, 77.36.050, and 77.36.080; providing an  
4 effective date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 77.36.005 and 1996 c 54 s 1 are each amended to read  
7 as follows:

8 The legislature finds that:

9 (1) As the number of people in the state grows and wildlife habitat  
10 is altered, people will encounter wildlife more frequently. As a  
11 result, conflicts between humans and wildlife will also increase.  
12 Wildlife is a public resource of significant value to the people of the  
13 state and the responsibility to minimize and resolve these conflicts is  
14 shared by all citizens of the state.

15 (2) In particular, the state recognizes the importance of  
16 commercial agricultural and horticultural crop production, rangeland  
17 suitable for grazing or browsing of domestic livestock, and the value  
18 of healthy deer and elk populations, which can damage such crops. The  
19 legislature further finds that damage prevention is key to maintaining

1 healthy deer and elk populations, wildlife-related recreational  
2 opportunities, ~~((and))~~ commercially productive agricultural and  
3 horticultural crops, and rangeland suitable for grazing or browsing of  
4 domestic livestock, and that the state, participants in wildlife  
5 recreation, and private landowners and tenants share the responsibility  
6 for damage prevention. Toward this end, the legislature encourages  
7 landowners and tenants to contribute through their land management  
8 practices to healthy wildlife populations and to provide access for  
9 related recreation. It is in the best interests of the state for the  
10 department of fish and wildlife to respond quickly to wildlife damage  
11 complaints and to work with these landowners and tenants to minimize  
12 and/or prevent damages and conflicts while maintaining deer and elk  
13 populations for enjoyment by all citizens of the state.

14 (3) A timely and simplified process for resolving claims for  
15 damages caused by deer and elk for commercial agricultural ~~((or))~~  
16 products, horticultural products, or rangeland suitable for grazing or  
17 browsing of domestic livestock is beneficial to the claimant and the  
18 state.

19 **Sec. 2.** RCW 77.36.010 and 1996 c 54 s 2 are each amended to read  
20 as follows:

21 ~~((Unless otherwise specified,))~~ The ~~((following))~~ definitions in  
22 this section apply throughout this chapter~~((+))~~ unless the context  
23 clearly requires otherwise.

24 (1) "Crop" means a commercially raised horticultural and/or  
25 agricultural product and includes growing or harvested product ~~((but~~  
26 ~~does not include livestock))~~ and rangeland forage on privately owned  
27 land or on lands leased from any public agency suitable for grazing or  
28 browsing of domestic livestock for at least a portion of the year. For  
29 the purposes of this chapter all parts of horticultural trees shall be  
30 considered a crop and shall be eligible for claims.

31 (2) "Emergency" means an unforeseen circumstance beyond the control  
32 of the landowner or tenant that presents a real and immediate threat to  
33 crops, domestic animals, or fowl.

34 (3) "Immediate family member" means spouse, brother, sister,  
35 grandparent, parent, child, or grandchild.

36 **Sec. 3.** RCW 77.36.030 and 1996 c 54 s 4 are each amended to read  
37 as follows:

1 (1) Subject to the following limitations and conditions, the owner,  
2 the owner's immediate family member, the owner's documented employee,  
3 or a tenant of real property may trap or kill on that property, without  
4 the licenses required under RCW 77.32.010 or authorization from the  
5 director under RCW 77.12.240, wild animals or wild birds that are  
6 damaging crops, domestic animals, or fowl:

7 (a) Threatened or endangered species shall not be hunted, trapped,  
8 or killed;

9 (b) Except in an emergency situation, deer, elk, and protected  
10 wildlife shall not be killed without a permit issued and conditioned by  
11 the director or the director's designee. In an emergency, the  
12 department may give verbal permission followed by written permission to  
13 trap or kill any deer, elk, or protected wildlife that is damaging  
14 crops, domestic animals, or fowl; and

15 (c) On privately owned cattle ranching lands and on lands leased  
16 from any public agency suitable for grazing or browsing of domestic  
17 livestock, the landowner or lessee may declare an emergency only when  
18 the department has not responded within forty-eight hours after having  
19 been contacted by the landowner or lessee regarding damage caused by  
20 wild animals or wild birds. In such an emergency, the owner or lessee  
21 may trap or kill any deer, elk, or other protected wildlife that is  
22 causing the damage but deer and elk may only be killed if such lands  
23 were open to public hunting during the previous hunting season, or the  
24 closure to public hunting was coordinated with the department to  
25 protect property and livestock.

26 (2) Except for coyotes and Columbian ground squirrels, wildlife  
27 trapped or killed under this section remain the property of the state,  
28 and the person trapping or killing the wildlife shall notify the  
29 department immediately. The department shall dispose of wildlife so  
30 taken within three days of receiving such a notification and in a  
31 manner determined by the director to be in the best interest of the  
32 state.

33 **Sec. 4.** RCW 77.36.040 and 1996 c 54 s 5 are each amended to read  
34 as follows:

35 (1) Pursuant to this section, the director or the director's  
36 designee may distribute money appropriated to pay claims for damages to  
37 crops caused by wild deer or elk in an amount of up to ten thousand  
38 dollars per claim. Damages payable under this section are limited to:

1       (a) The value of such commercially raised horticultural or  
2 agricultural crops, whether growing or harvested(~~(, and)~~); or

3       (b) Damages to rangeland livestock forage in excess of ten percent  
4 of historic use levels for privately owned land or on lands leased from  
5 any public agency and fenced ranch or farm units that are specifically  
6 limited to hay meadows, pasture meadows, artificially seeded  
7 rangelands, and grazing land that is deferred to seasonal use.  
8 Historic levels must be expressed in average numbers of deer and elk on  
9 the property in question over the previous ten years.

10       Damages shall be paid only to the owner of the crop or the lessee  
11 of rangeland from a public agency at the time of damage, without  
12 assignment. Damages shall not include damage to other real or personal  
13 property including other vegetation or animals, damages caused by  
14 animals other than wild deer or elk, lost profits, consequential  
15 damages, or any other damages whatsoever. These damages shall comprise  
16 the exclusive remedy for claims against the state for damages caused by  
17 wildlife.

18       (2) The director may adopt rules for the form of affidavits or  
19 proof to be provided in claims under this section. The director may  
20 adopt rules to specify the time and method of assessing damage. Except  
21 for rangeland, the burden of proving damages shall be on the claimant.  
22 For rangeland, if the director does not agree with the claimant on  
23 normal historic levels or any element of a damage settlement, the  
24 matter must be submitted to arbitration within ten days of notice by  
25 either party. The arbitration panel consists of one arbitrator chosen  
26 by the landowner, one arbitrator chosen by the director, and one  
27 arbitrator chosen by the other two arbitrators. If the two arbitrators  
28 cannot agree within ten days on a third arbitrator, a request by either  
29 party must be made to the superior court of the county in which the  
30 damage is located for appointment of a third impartial arbitrator. The  
31 director and landowner equally share the cost of the use of the third  
32 arbitrator. Historic levels or any other element settled by  
33 arbitration may be included in an appeal to a court of competent  
34 jurisdiction, and the court is not bound by the finding of the  
35 arbitration panel. Payment of claims shall remain subject to the other  
36 conditions and limits of this chapter.

37       (3) If funds are limited, payments of claims shall be prioritized  
38 in the order that the claims are received. No claim may be processed  
39 if:

1 (a) The claimant did not notify the department within ten days of  
2 discovery of the damage. If the claimant intends to take steps that  
3 prevent determination of damages, such as harvest of damaged crops,  
4 then the claimant shall notify the department as soon as reasonably  
5 possible after discovery so that the department has an opportunity to  
6 document the damage and take steps to prevent additional damage; or

7 (b) The claimant did not present a complete, written claim within  
8 sixty days after the damage, or the last day of damaging if the damage  
9 was of a continuing nature.

10 (4) The director or the director's designee may examine and assess  
11 the damage upon notice. The department and claimant may agree to an  
12 assessment of damages by a neutral person or persons knowledgeable in  
13 horticultural or agricultural practices. The department and claimant  
14 shall share equally in the costs of such third party examination and  
15 assessment of damage.

16 (5) There shall be no payment for damages if:

17 (~~(a)~~) (~~The crops are on lands leased from any public agency;~~

18 ~~(b)~~) The landowner or claimant failed to use or maintain  
19 applicable damage prevention materials or methods furnished by the  
20 department, or failed to comply with a wildlife damage prevention  
21 agreement under RCW 77.12.260;

22 (~~(e)~~) (b) The director has expended all funds appropriated for  
23 payment of such claims for the current fiscal year; or

24 (~~(d)~~) (c) The damages are covered by insurance. The claimant  
25 shall notify the department at the time of claim of insurance coverage  
26 in the manner required by the director. Insurance coverage shall cover  
27 all damages prior to any payment under this chapter.

28 (6) Except for claims for damages to rangeland livestock forage,  
29 when there is a determination of claim by the director or the  
30 director's designee pursuant to this section, the claimant has sixty  
31 days to accept the claim or it is deemed rejected.

32 **Sec. 5.** RCW 77.36.050 and 1996 c 54 s 6 are each amended to read  
33 as follows:

34 Except for claims for damages to rangeland livestock forage, if the  
35 claimant does not accept the director's decision under RCW 77.36.040,  
36 or if the claim exceeds ten thousand dollars, then the claim may be  
37 filed with the office of risk management under RCW 4.92.040(5). The  
38 office of risk management shall recommend to the legislature whether

1 the claim should be paid. If the legislature approves the claim, the  
2 director shall pay it from moneys appropriated for that purpose. No  
3 funds shall be expended for damages under this chapter except as  
4 appropriated by the legislature. Claims for damages to rangeland  
5 livestock forage must be settled under RCW 77.36.040(2).

6 **Sec. 6.** RCW 77.36.080 and 1996 c 54 s 9 are each amended to read  
7 as follows:

8 (1) The department may pay no more than thirty thousand dollars per  
9 fiscal year from the general fund for claims under RCW 77.36.040 and  
10 for assessment costs and compromise of claims unless the legislature  
11 declares an emergency. Such money shall be used to pay animal damage  
12 claims only if the claim meets the conditions of RCW 77.36.040 and the  
13 damage occurred in a place where the opportunity to hunt was restricted  
14 or prohibited by a county, municipality, or other public entity during  
15 the season prior to the occurrence of the damage.

16 (2) The legislature may declare an emergency, defined for the  
17 purposes of this section as any happening arising from weather, other  
18 natural conditions, or fire that causes unusually great damage to  
19 commercially raised agricultural or horticultural crops, or rangeland  
20 forage on privately owned land or on lands leased from any public  
21 agency suitable for grazing or browsing of domestic livestock for at  
22 least a portion of the year by deer or elk. In an emergency, the  
23 department may pay as much as may be subsequently appropriated, in  
24 addition to the funds authorized under subsection (1) of this section,  
25 for claims under RCW 77.36.040 and for assessment and compromise of  
26 claims. Such money shall be used to pay animal damage claims only if  
27 the claim meets the conditions of RCW 77.36.040 and the department has  
28 expended all funds authorized under RCW 77.36.070 or subsection (1) of  
29 this section.

30 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
31 preservation of the public peace, health, or safety, or support of the  
32 state government and its existing public institutions, and takes effect  
33 July 1, 2001.

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